

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of       )  
MICHAEL J. AND DONNA C. FRANZBLAU    )

For Appellants: Michael J. Franzblau,  
in pro. per.

For Respondent: James T. **Philbin**  
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Michael J. and Donna C, Franzblau against a proposed assessment of additional personal income tax in the amount of **\$1,201.39** for the year 1975. During the course of these proceedings the amount has been paid in full: therefore, in accordance with section 19061.1 of the Revenue and Taxation Code we are treating the appeal as an appeal from the denial **of a claim for refund.**

Appeal of Michael J. and Donna C. Franzblau

Appellants' 1975 federal income tax return was audited during 1976. The audit resulted in increasing **appellants'** federal income tax liability which was reflected in the Revenue Agent's Report dated November 30, 1976. Thereafter, on December 28, 1977, respondent issued a notice of proposed assessment reflecting the corresponding state adjustments. This notice **was** not protested.

Additional adjustments were made to appellants' federal income tax liability which were reflected in a Revenue Agent's Report dated November 30, 1977. This report was signed by appellants indicating their agreement to the federal adjustments. Once again respondent made the corresponding changes to appellants' state income tax liability which were set out in a notice of proposed assessment dated May 19, 1978. Subsequently, appellants filed this appeal and paid the tax.

Appellants do not attack the federal or state adjustments directly. However, they do argue that the **statute of** limitations had expired when the state assessments were made.

Section 18586 of the Revenue and Taxation Code **provides, in part, that "every notice of proposed** assessment shall be mailed to the taxpayer within four years after the return was filed." Appellants' 1975 return was due on April 15, 1976. Four years after that date was April 15, 1980. The proposed assessments involved in this appeal were issued on December 28, 1977, and May 19, 1978. Both dates were well within the four year statutory period.'

Appellants also argue that delay on behalf of respondent resulted in excessive interest due.

Initially, we note that the record does not support appellants' attempt to charge respondent with responsibility for any delay in this proceeding. In any event, we have held in a host of prior decisions that interest imposed on an unpaid deficiency by section 18688 of the Revenue and Taxation Code is mandatory. (See, e.g., Appeal of Allan Wh. Sha iCal. St. Bd. of Equal., Aug. 1, 1974; Appeal of Rut Wertheim Smith, Cal. St. Bd. of Equal., Aug. 3, 1965.) The **interest is** not a penalty but is compensation for the use of the money during the period of the underpayment. (Appeal

of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 22, 1976.)

## ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Michael J. and Donna C. Franzblau against a proposed assessment of additional personal income tax in the amount of **\$1,201.39** for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day  
of November , 1980, by the State Board of Equalization,  
with Members Nevins, Reilly, Dronenburg and Bennett present.

Richard Nevins, Chairman  
George R. Reilly, Member  
Ernest J. Dronenburg, Jr., Member  
William M. Bennett, Member  
\_\_\_\_\_, Member